

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
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Broadcast Localism)
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MB Docket No. 04-233

To: The Commission

**COMMENTS OF THE RECORDING INDUSTRY
ASSOCIATION OF AMERICA, INC.**

The Recording Industry Association of America, Inc. ("RIAA"), on behalf of its member companies,¹ hereby submits these Comments in response to the Commission's request in the *Notice of Inquiry* in the above-captioned proceeding for comment concerning the impact of certain practices in the radio industry on localism and whether those practices are consistent with the Commission's payola rules.² RIAA is the trade association that represents the U.S. recording industry. Its members are the record companies that comprise the most vibrant national music industry in the world. RIAA members create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States.

The *Notice of Inquiry* references certain practices in the radio industry that the Commission indicated may be inconsistent with localism because stations air

¹ RIAA's member companies include the four major record companies, EMI Music, Sony BMG Music Entertainment, Universal Music Group and Warner Music Group, as well as many smaller record companies.

programming based on their financial stakes at the expense of community needs. Some of those practices were referenced in the May 24, 2002, “Joint Statement on Current Issues in Radio” that was delivered to Congress and the Commission by a number of music industry groups.

The effect of these practices on localism has been increased by the consolidation in the radio industry. Starting in the early 1990s³ and accelerated by the passage of the Telecommunications Act of 1996 (the “1996 Act”),⁴ the radio industry has gone from a diverse ownership structure with thousands of owners of individual radio stations or small-group owners to one in which a handful of large radio groups have acquired hundreds or, in the case of one group, more than a thousand, individual radio stations in major radio markets throughout the country.⁵ This consolidation has brought with it a centralization of decision-making concerning playlists, with many of these large radio station groups employing national or regional programming directors for their various music formats.⁶ With control over stations in many, if not most, major markets, decisions

² See *Notice of Inquiry* ¶¶ 33-35.

³ See *In re Revision of Radio Rules and Policies*, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 7 FCC Rcd. 6387 (1992) (relaxing national and local radio ownership rules).

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, §202(b)(1)(A), 110 Stat. 56, 110. As a result of the 1996 Act, “there are 1,100 fewer station owners in the business today, down nearly 30 percent since 1966.” Eric Boehlert, *One big happy channel?* Salon.com, June 28, 2001.

⁵ The radio industry is now dominated by ten parent companies whose stations reach two-thirds of the listeners nationwide. Two parent companies – Clear Channel and Viacom (which owns Infinity Broadcasting) – collectively own over 1350 radio stations, earned over 40% of the industry revenue in 2002 and respectively reach 100 million and 75 million listeners.

⁶ See John Luff, *Centralcasting: No Benefit without Risk*, Broadcasting Engineering, Jan. 1, 2002, available at 2002 WL 10927529; *Concern Grows as Radio Playlists Fewer Releases [sic]*, Music Week, Mar. 4, 2000, at 4, available at 2000 WL 17709809.

by regional or national program directors about what songs are played carry added importance.⁷

The consolidation in the industry, and the practices noted by the Commission in the *Notice of Inquiry* that have developed as a result, manifestly affect music diversity and the responsiveness of stations to local musical tastes. In view of the changing marketplace, review of the Commission's sponsorship identification rules to determine whether they should be amended is required. The current rules were adopted in response to practices prevalent in the 1960s when payment or other consideration was made to station employees to influence directly the music being broadcast, and Commission decisions under those rules indicated that there had to be a clear *quid pro quo* between the payments and the broadcasts.⁸ The practices discussed in the *Notice of Inquiry* lack that direct tie between any benefit and any specific record.

Since the practices highlighted in the *Notice of Inquiry* implicate the Commission's concern that where radio "stations ... broadcast programming based on

⁷ Although the Cumulus Media ban of the Dixie Chicks in 2003 occurred in a different context, it demonstrates the potential for a large station group to institute a nationwide boycott against a particular artist or label. See, e.g., Anne Hull, *Uncowed Cowgirls*, The Washington Post, Aug. 8, 2003 at C1 ("Cumulus Media directed all 42 of its country radio stations to ban the Chicks for a month" after lead singer Natalie Maines made remarks critical of the impending war with Iraq).

⁸ See, e.g., *In re Applications of Metroplex Communications, Inc. (WHYI-FM) for Renewal of License*, Decision, 4 FCC Rcd. 8149 (Rev. Bd. 1989) (finding small gifts and favors from record promoters to station employees did not provide sufficient evidence to show that station's music selections were tied to the record promoter's gifts); *In re Application of Ben L. Parker for Renewal of License of Station KBOP*, Memorandum Opinion and Order, 48 FCC 2d 603, ¶ 6 (1974) (finding that payola allegations against Spanish-language announcer were "bare of any specific instances of this practice," and that there was no "evidence that records ha[d] been illegally promoted or played over the station"); *In re Applications of Dena Pictures, Inc. for Renewal of Licenses*, Memorandum Opinion and Order, 71 FCC 2d 1402, ¶ 14 (1979) (holding that perks from

their financial interests at the expense of community responsiveness, the practice is inconsistent with localism,”⁹ the Commission should take the opportunity presented by this proceeding to address these practices. Specifically, the Commission should (1) require that payments made by independent promoters to radio stations that are designed to influence playlists should be disclosed over the air and (2) prohibit threats, express or implied, by radio stations to boycott the recordings of a record label or any artist unless the company or artist provides the station group, directly or indirectly, with money, services or other valuable consideration.

Respectfully Submitted,

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record promoters, such as invitations to party and monthly coffee service, were “too nominal to be characterized as ‘valuable consideration’”).

⁹ See *Notice of Inquiry* ¶33.